

EXHIBIT 23

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

CHAPTER 11

IN RE:

W.R. GRACE & CO., et al.,

Debtors.

Case No. 01-1139 (JFK)

DEPOSITION OF:

Jennifer L. Biggs

Monday, November 5, 2007

Washington, D.C.

Lead: David Bernick, Esquire

Firm: Kirkland & Ellis, LLP

FINAL COPY

JANE ROSE REPORTING 1-800-825-3341

JANE ROSE REPORTING
1-800-825-3341 janerosereporting.com

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 58

1 two models that it uses. One is an
2 insurance model. The other is a
3 defendant -- the defendant insured's model,
4 fair?

5 A Correct.

6 Q Okay. All I am saying is, if
7 we wanted to go look for those models and
8 find them described, is there any
9 publication or piece of paper that is made
10 available publicly that describes exactly
11 how those models work?

12 A The paper that we have been
13 referring to provides quite a bit of detail
14 regarding the insurance model. There is
15 not a separate article that talks
16 specifically to our defendant model; but
17 some of the process and method that is used
18 to estimate the liabilities of an
19 individual defendant are described within
20 the paper that we have been talking about.

21 Q Okay. I think I understand the
22 answer to that question.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 64

1 intellectual capital, some of the specific
2 assumptions and how we developed those
3 assumptions, that is proprietary, yes.

4 **Q And in terms of the**
5 **peer-reviewed paper, the only peer-reviewed**
6 **paper that you have identified so far**
7 **that -- unless you are going to tell me**
8 **about -- the only peer-reviewed paper you**
9 **have identified so far that relates to**
10 **those models is the Cross paper published**
11 **in '97, correct?**

12 **A That's the only paper that**
13 **deals specifically with the model. But**
14 **there are other -- there is other**
15 **peer-reviewed information that feeds into**
16 **the model.**

17 **For example, we rely on**
18 **assumptions relating to run-off patterns**
19 **that were developed by Professor Stallard,**
20 **and his work was peer-reviewed as part of**
21 **the Manville proceedings back in 1993 and**
22 **1994.**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 65

1 So different assumptions that
2 we rely on could be peer-reviewed or
3 published in other places.

4 **Q Is there any other -- is there**
5 **any assumption that's in the model beyond**
6 **Mr. Stallard -- Dr. Stallard's run-off**
7 **assumption that has been peer-reviewed?**

8 A Not that is occurring to me
9 right now.

10 **Q You said that there is a**
11 **difference between the underlying -- there**
12 **is a difference between the estimation of**
13 **the insureds' asbestos liability as it's**
14 **treated in the two models -- that is, the**
15 **defense model versus and the insurance**
16 **model -- because of information**
17 **constraints.**

18 **What did you mean by**
19 **information constraints?**

20 A When we do work for an
21 insurance company or a reinsurance company,
22 we are typically looking at the experience

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 74

1 **made available publicly, that is,**
2 **published, an estimate for liability of a**
3 **specific defendant company?**

4 A I am not sure what was
5 published with regard to the liabilities of
6 the early bankruptcies that I mentioned
7 earlier such as Pay Corp.

8 In terms of liability estimates
9 for other individual defendants, I'm not
10 aware of any.

11 **Q Okay. I take it that the**
12 **answer would -- this is pretty**
13 **self-evident, but there has not been a**
14 **defendant-specific asbestos liability**
15 **estimate by Tillinghast that has been**
16 **published in a peer-reviewed journal,**
17 **correct?**

18 A A specific estimate in a
19 peer-reviewed journal, no.

20 **Q Okay. The expert report that**
21 **you did for Delta American Re, that expert**
22 **report and your testimony, did that reveal**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 117

1 **estimating -- is, you are estimating the**
2 **presentation of claims that are -- their**
3 **frequency, their value, their payment?**

4 A That's right.

5 **Q Okay. And so those are**
6 **behaviors; are they not?**

7 A And I evaluate them in
8 aggregate, and I think I was perhaps
9 misinterpreting your question in terms of
10 individual behaviors.

11 **Q But those are the behaviors --**
12 **those are behaviors; are they not?**

13 A That claims are filed.

14 **Q And settled.**

15 A They represent the behavior or
16 actions of the parties involved.

17 **Q Right. And there are many,**
18 **many different factors that relate to those**
19 **behaviors; are there not?**

20 A Yes.

21 **Q There are the behaviors of**
22 **lawyers in different parts of the country.**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 118

1 **There are the behaviors of the courts in**
2 **administering the claims and setting**
3 **standards for the claims. There are**
4 **behaviors of the companies that are**
5 **litigating or settling the claims.**

6 **Correct?**

7 A Those would be included, yes.

8 **Q And there are causes of all of**
9 **those behaviors; are there not?**

10 A Yes.

11 **Q And all I'm saying is:**
12 **Have you done an expert**
13 **analysis at any point in time that**
14 **specifically and quantitatively identifies**
15 **the causes of any of those behaviors?**

16 A No.

17 **Q Whose job is it in estimation**
18 **to do that?**

19 A It's not necessary for
20 estimation.

21 **Q Well, fair enough. That's**
22 **something that estimation doesn't purport**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 119

1 to do?

2 A It's not necessary. What I am
3 trying to estimate is the resulting
4 effects, not the cause of it.

5 Q But we all know that, if
6 something happens in the future, the
7 changes in the environment, that can have
8 effect on claims-filing and settlement,
9 right?

10 MR. MULLADY: Objection.
11 Vague.

12 Q Well, your counsel has said
13 that's vague. Let's go back.

14 If we take a look at the
15 history of asbestos claims filing and
16 resolution, that is a history where there
17 have been huge changes that affected
18 dramatically the trends of claim filing and
19 resolution, correct?

20 MR. MULLADY: Objection to the
21 form.

22 A There have been many changes

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 120

1 over the years, yes.

2 **Q And those reflect the fact that**
3 **different factors have come into the legal**
4 **environment that cause changes in behavior,**
5 **correct?**

6 A One of many reasons.

7 **Q Okay. So one of many reasons,**
8 **yes? If you just say "one of many**
9 **reasons" --**

10 A One of many reasons, yes.

11 **Q So, now, obviously, if you are**
12 **predicting what is going to happen in the**
13 **future, the future is going to be subject**
14 **to similar changes, right?**

15 A Not necessarily of the same
16 cause or magnitude.

17 **Q I understand that. That's the**
18 **whole issue, isn't it, that, in the future,**
19 **we know that there is going to be some**
20 **change, correct?**

21 A In something. I don't know
22 change in what.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 125

1 radically because a meso claim is not going
2 to be worth a lot less today than it used
3 to be worth. It's still worth a lot of
4 money.

5 So I am an expert in looking at
6 claiming behaviors in the aggregate and
7 making reasonable assumptions to feed into
8 my model.

9 So I don't want to say I am not
10 an expert because I am an expert in making
11 those estimations, and they incorporate
12 some of what I believe you are describing.

13 And when you use the label an
14 "expert" in this, my expertise is very
15 broad. So your questions are confusing to
16 me.

17 **Q Well, I understand that, but**
18 **your expertise has a limitation. And all**
19 **I'm doing is exploring the limitations of**
20 **your expertise.**

21 **You can do calculations using**
22 **models, but you have to have assumptions**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 126

1 **that drive those models, correct?**

2 A The assumptions are a very
3 important part of it.

4 **Q And the assumptions that you**
5 **were just talking about, the assumptions**
6 **that are important to estimating a future**
7 **rate of claim filings, are assumptions that**
8 **go to how people will act under various**
9 **circumstances, correct?**

10 A In the aggregate.

11 **Q In the aggregate?**

12 A Correct.

13 **Q And in the aggregate their**
14 **actions under those circumstances would be**
15 **a function of a variety of factors,**
16 **correct?**

17 A Yes.

18 **Q Okay. And when it comes to how**
19 **those -- what those factors are and how**
20 **they will affect claiming behavior, there**
21 **are people who are expert in analyzing**
22 **marketplace behavior from the point of view**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 130

1 A Correct.

2 Q Now, when it comes to, for
3 example, whether propensity to sue is going
4 to go up or down against a given company,
5 that is also an area that in your analysis
6 is an area about which you make
7 assumptions?

8 A In this case, I make
9 assumptions regarding the propensity to sue
10 Grace.

11 Q Right. Now, those assumptions
12 about the propensity to sue Grace, whether
13 they are going to go up or down, are
14 assumptions that don't come to you as a
15 result of any scientist saying, "Here is
16 what is going to happen," correct?

17 A I don't -- I don't get them
18 from an outside expert. Those are my
19 assumptions.

20 Q Right. And when you say your
21 assumptions, you don't have a quantitative
22 or published methodology on the basis of

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 136

1 differs, yes.

2 **Q Okay. And when it comes to**
3 **that litigation environment, you -- it**
4 **would be fair to say -- I think you just**
5 **said it -- that it's very difficult to**
6 **predict how the litigation environment is**
7 **actually going to change from year to year.**

8 **Would that be fair?**

9 **A** You might have ideas of certain
10 reforms that are about to pass or things
11 like that, but it's difficult to predict
12 years in advance how the litigation
13 environment might change, yes.

14 **Q In fact, if you take a look at**
15 **Manville, nobody predicted that, when the**
16 **Manville Trust opened its doors in the**
17 **first instance, that it would be**
18 **overwhelmed with claims, correct?**

19 **MR. FINCH:** Objection.
20 **Foundation.**

21 **Q If you know. If you don't**
22 **know, just say you don't know.**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 137

1 A I don't know.

2 Q No one predicted in the early
3 '90s that claims would continue to rise
4 during the mid '90s, correct, against the
5 industry in general?

6 A I think some of the work that
7 Professor Stallard did included different
8 ranges of estimates against Manville
9 specifically. I don't know what specific
10 industry-wide projections regarding
11 increased claims were in the early '90s.

12 Q In the late '90s, there was a
13 very dramatic up-swing in claims
14 industry-wide, correct?

15 A Yes.

16 Q Nobody predicted that; did
17 they?

18 A They may have been part of
19 ranges of estimates.

20 Q You don't know -- do you know
21 that they were?

22 A I believe in the 1993 and 1994

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 138

1 work there were many, many scenarios of
2 possible future claim filings in the
3 context of the Manville Trust.

4 **Q So it's your testimony that**
5 **Mr. Stallard got it right? He predicted**
6 **the up-swing in the late 1990s?**

7 MR. MULLADY: Objection.
8 That's not what she said.

9 **Q Well, there was an up-swing --**

10 A I believe he provided a range
11 of projections. I don't think that that
12 was what he called his preferred estimate,
13 but I believe that he explored the
14 uncertainty and provided a range of
15 possible outcomes.

16 **Q Right. And then he did a**
17 **retrospective view after 2000, and he had**
18 **to adjust his model because it turns out**
19 **that the world had changed, correct?**

20 A He -- in his 2001 paper, he
21 described a way to update his projections
22 to reflect changes in the propensity to

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 139

1 sue. That's right.

2 **Q And he had not foreseen these**
3 **changes at the time he did his original**
4 **estimate, correct?**

5 A I don't know what he foresaw.
6 But his original preferred estimate of the
7 number of claims, the actual subsequent
8 events, differed from that.

9 **Q Okay. And then there was a**
10 **very significant change in filing behavior**
11 **against Manville and against other**
12 **companies after 2003, correct?**

13 A There were changes against
14 filings against Manville as well as other
15 companies, not necessarily related.

16 **Q But there were significant**
17 **changes, correct?**

18 A There were dramatic decreases
19 in the number of non-malignant claim
20 filings.

21 **Q And nobody predicted those,**
22 **correct?**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 140

1 MR. FINCH: Objection to the
2 form. Foundation.

3 Q In 2003, nobody predicted the
4 drop-off that was going to occur in 2004,
5 correct?

6 A I am not aware of it.

7 Q Now, in your estimate, take
8 the -- so we what we have is a series of
9 changes that have taken place in the
10 litigation environment over the years,
11 fair?

12 A Yes.

13 Q And is it also fair to say that
14 people who have done estimates of asbestos
15 liability have, with a fair degree of
16 consistency, failed to predict those
17 changes, true or not?

18 A There have been changes in the
19 litigation environment that have not been
20 predicted ahead of time, true.

21 Q Now, Mr. -- Dr. Peterson was
22 able to testify that the longest that he

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 146

1 **Q -- '97 to 2001, and you adjust**
2 **it to reflect the Grace in your view has**
3 **later dates of first exposure?**

4 A Based on their own claim data.

5 **Q Based on their own claim data.**

6 **And subject to that one**
7 **adjustment, you assume that the litigation**
8 **environment of Grace versus the rest of the**
9 **industry otherwise remains constant for the**
10 **rest of the projection, correct?**

11 A I think -- yes, let me try to
12 answer it with more words. I do --

13 **Q If you feel it necessary?**

14 A I do.

15 I continue to reflect changes
16 in the industry level of claim filing
17 beyond Grace's bankruptcy date; but, other
18 than the adjustments for the differences in
19 first exposure dates, I assume that Grace's
20 experience will follow the same general
21 pattern as what I have assumed for the
22 industry in total.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 160

1 **and the ratio that comes out of that, the**
2 **assumption that it would then remain**
3 **constant over a long period of years, with**
4 **the exception of the date of first exposure**
5 **adjustment, that assumption is an**
6 **assumption that you did not test, correct?**

7 MR. FINCH: Objection to the
8 form.

9 A I haven't tested it in a
10 statistical sense because there are not any
11 statistics to test. I have tested it from
12 a reasonableness perspective in terms of
13 what might be likely to happen to Grace
14 relative to other defendants.

15 **Q Okay. Now, from that**
16 **perspective, that is the perspective that**
17 **says, "Is Grace's environment vis-a-vis**
18 **other defendants going to change or not in**
19 **the future," that's an assessment that you**
20 **did to see about reasonableness, right?**

21 MR. MULLADY: Objection.
22 Foundation.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 163

1 A Correct.

2 Q You didn't do any quantitative
3 test, correct, of your assumption?

4 A Of the future -- let me just
5 make sure I understand what you are saying.

6 Of the ratio of future Grace
7 claims that don't exist --

8 Q That's your statement.

9 A -- relative -- well, I don't
10 understand your question then.

11 Q Very simple.

12 You took a ratio that was
13 derived from an historical period of time.
14 You assumed it was going to remain the
15 same. That assumption you did not test
16 statistically.

17 You have just testified to
18 that, right?

19 A The basis for the assumption is
20 tested statistically based on historical
21 information.

22 Q The assumption that the

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 164

1 propensity would remain the same in the
2 future from 2001 going forward would remain
3 the same, that is an assumption, correct or
4 not?

5 A That's an assumption.

6 Q Okay. And it wasn't tested by
7 you, correct or not?

8 A To the extent I've looked at
9 the stability of the historical ratio, that
10 is a test of the validity of that
11 assumption in the future.

12 In terms of other tests that
13 you seem to be implying that I should have
14 done, I don't even know what you are
15 suggesting; but based on all of the data
16 that is available, I performed reasonable
17 tests to support the assumption.

18 Q Okay. Okay. The only thing
19 that you have now referred to is tests to
20 the history, right?

21 You said that you looked at
22 tests going back?

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 166

1 the '97, '98 time frame, '99 time frame.

2 Grace had entered into a
3 moratorium agreement, so their level of
4 filings during those years was suppressed.
5 If I look at their ratio relative to the
6 industry, I see that it looks low in the
7 years that there are moratoriums.

8 So I am able to interpret that
9 data. I am able to understand what caused
10 their relationship relative to the industry
11 to change during different time frames.

12 And the purpose of this whole
13 calibration period is to look at the years
14 and the time frame that will be most
15 relevant for selecting Grace's ratio
16 relative to the industry on a going-forward
17 basis. And I think I have done adequate
18 tests to make that assumption.

19 **Q What you have now said is that**
20 **you looked at historically to the**
21 **propensity to given periods. Then you made**
22 **a judgment about which one would be**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 167

1 **reasonable to be used on a going-forward**
2 **basis; is that right?**

3 MR. MULLADY: Objection.
4 Misstates the testimony.

5 **Q Is that right or not,**
6 **Ms. Biggs?**

7 A I have made a well-grounded
8 assumption.

9 MR. MULLADY: Can we take a
10 short break.

11 MR. BERNICK: No, I want to ask
12 a few more questions. Then I will be
13 five or ten minutes. I actually just
14 want to finish this up.

15 MR. MULLADY: We are going to
16 stop soon.

17 MR. BERNICK: You can stop
18 anytime you want, Ray.

19 MR. MULLADY: Well, I just
20 asked you if we could stop and you
21 said you wanted to ask five more
22 minutes of questions.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 190

1 A And to make adjustments if you
2 need to.

3 **Q If you have the ability to**
4 **determine what the subsequent experience**
5 **is, with respect to a given estimate, is it**
6 **required or important, either one, under**
7 **actuarial standards to test that estimate**
8 **and see whether it was accurate or not?**

9 A I think it would be a best
10 practice.

11 **Q Okay. Now, have you actually**
12 **tested any of your -- any company-specific**
13 **estimate that Tillinghast has done to see**
14 **whether over time it was accurate or not?**

15 A I have compared some estimates,
16 how they have changed over time.

17 **Q Is any -- are any of those**
18 **comparisons publicly available?**

19 A Not that I'm aware of.

20 **Q Have you tested whether -- have**
21 **you found any estimate that turned out to**
22 **be still accurate five years later, going**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 191

1 **out that far?**

2 A By "still accurate" can you
3 define what that would mean, because I
4 typically provide a range of estimates.

5 **Q Yes, within the range of**
6 **estimates.**

7 A So within the range five years
8 later?

9 **Q Yes.**

10 A Certainly, some of them have
11 been, yes.

12 **Q Ten years?**

13 A I am not aware of comparisons
14 where we have looked at the same book of
15 business ten years apart to make the
16 comparison.

17 **Q Now, in the case of -- in the**
18 **case of -- strike that.**

19 **In the case of the asbestos**
20 **liability estimates, I think that's where I**
21 **have -- I started out. Strike that.**

22 **I want to go -- you are talking**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 195

1 **when it comes to claiming behavior. And he**
2 **refers to those as socio-legal or legal**
3 **environment.**

4 **Are you familiar with that?**

5 MR. MULLADY: Objection to
6 foundation.

7 A It sounds familiar. I read his
8 deposition quickly, so I will -- should
9 I -- you are telling me that's what he
10 said, right.

11 **Q That's what he said. I am just**
12 **asking whether you are familiar with that.**

13 A I thought you were asking me if
14 that's what he said.

15 **Q No. Are you familiar with his**
16 **other -- the fact that he differentiates**
17 **and says, apart from the biological**
18 **process, there is a legal environment**
19 **process that affects claiming behavior?**

20 **Are you familiar with his**
21 **statements and writings to that effect?**

22 A I would agree with the premise.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 216

1 think are going to take place in the legal
2 environment in the future with regard to
3 the propensity to sue for mesothelioma?

4 A I have basically predicted that
5 the environment will be consistent with
6 what we see today, so I haven't tried to
7 predict future changes in that environment.

8 Q With respect to Grace, you have
9 assumed that the environment will be the
10 same as the way it was from '97 to 2001,
11 correct?

12 MR. FINCH: Objection to the
13 form.

14 A No.

15 Q In terms of the propensity to
16 sue, Grace versus the industry?

17 A Maybe -- that's not what you
18 asked me.

19 Q Well, I'm sorry.

20 With respect to Grace, the
21 propensity to sue Grace versus the
22 industry, you are assuming will be the same

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 217

1 **going forward, the estimate, as it was from**
2 **'97 to 2001, correct?**

3 A Other than the changes in the
4 date of first exposure, I am assuming that
5 that -- that Grace's relationship relative
6 to the industry would remain constant.

7 **Q And in doing so, you did not**
8 **perform any scientific analysis of the**
9 **factors that would affect the propensity to**
10 **sue Grace for mesothelioma, correct?**

11 MR. MULLADY: Objection and
12 foundation.

13 A I reviewed the resulting
14 claims. Inherent within them are all of
15 those behaviors. I have not studied the
16 specific behaviors.

17 **Q Okay. But we know that**
18 **propensities have changed in the sense that**
19 **the result -- the result in terms of an**
20 **aggregate propensity -- we know that those**
21 **have shifted over time, right?**

22 A They have consistently

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 219

1 I mean, it brought some cases
2 to trial, but it settled most of its cases.

3 **Q That's true of most companies,**
4 **isn't it, they settle most of their cases,**
5 **right?**

6 A I believe that's true.

7 **Q But Grace also litigates the**
8 **cases, too, right?**

9 A Some of them.

10 **Q Union Carbide litigates cases,**
11 **has for the last two or three years,**
12 **correct?**

13 A I believe so. I don't follow
14 that closely.

15 **Q Ask him. He knows about that?**

16 A I don't talk to Ray about that.

17 **Q Union Carbide is solvent,**
18 **right?**

19 A Yes.

20 **Q How many other major solvent**
21 **defendants are there out there in the tort**
22 **system to litigate cases other than**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 224

1 having trouble focusing.

2 **Q Sure. That's fine.**

3 **"Are you aware of any**
4 **scientific methodology that is available**
5 **for predicting how the legal externalities**
6 **are going to evolve with respect to**
7 **asbestos claims?"**

8 **His answer was: "No."**

9 **Would your answer be different?**

10 **A I would also answer no.**

11 **Q Last question:**

12 **"Is there any scientific**
13 **methodology that you can think of that**
14 **would be capable of predicting changes in**
15 **the legal environment for asbestos?"**

16 **That's the question that I**
17 **asked him?**

18 **MR. MULLADY: Page?**

19 **MR. BERNICK: This is page 103.**

20 **Q "Is there any scientific**
21 **methodology that you can even think of that**
22 **would be capable of predicting changes in**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 226

1 method that I think you are looking for,
2 but it is a scientific way to do it.

3 **Q So your answer to that would be**
4 **yes?**

5 A I can think of something. Yes.

6 **Q Okay. But it's supposed to be**
7 **scientific methodology. Is that a**
8 **scientific methodology?**

9 A I am applying scientific
10 principles to evaluating past experience
11 and making a reasoned assumption going
12 forward. That's a scientific method.
13 Maybe we define that differently.

14 **Q Okay. Is that within the scope**
15 **of your expertise, the method that you just**
16 **described for predicting changes in the**
17 **legal environment?**

18 A I evaluated the likelihood of
19 significant changes in the legal
20 environment relating to meso claims. I
21 have to -- I have to make an assumption
22 regarding how that might or might not

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 229

1 of a way or a model to use to do that. As
2 a necessity of making my estimate, I need
3 to come up with an assumption regarding the
4 future propensity to sue. And the basis I
5 used to make that judgment is scientific in
6 nature.

7 So in a very technical sense, I
8 have used the scientific process to make an
9 assumption. I haven't built a model, and I
10 don't think I have the expertise to build a
11 model regarding specific claiming behavior
12 and how that would change in the future.

13 But that is different to me
14 than whether I have the expertise to use
15 scientific principles to make an informed
16 judgment and make a necessary judgment
17 regarding the estimate of future
18 liabilities.

19 **Q That's a question of selective**
20 **judgment, I think your term is?**

21 MR. FINCH: Objection to the
22 form.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 236

1 filed. I just know that they were filed.

2 And I also know that the rate
3 has been steadily increasing for many, many
4 years, and that, based on my understanding
5 of the environment, there is not a reason
6 to expect a decrease.

7 So my model is not a rigorous
8 regression analysis of specific variables
9 to affect propensity to sue. I am not
10 aware of that type of model, and that's not
11 what I have employed.

12 **Q And then, therefore, when it**
13 **comes to the future, you don't have a model**
14 **for future propensity. You have a model**
15 **for --**

16 **A I have an assumption for future**
17 **propensity to sue, based on the model of**
18 **the past.**

19 **Q Okay. But you don't have a**
20 **model for future propensity to sue. It is**
21 **an assumption, correct?**

22 **A It is -- I have a model of the**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 237

1 future propensity to sue in the industry,
2 and I have made an assumption regarding
3 Grace's share of that. So I do have a
4 model of the future propensity to sue.

5 **Q But you don't have a model of**
6 **the future propensity to sue at the company**
7 **level, correct?**

8 A I make an assumption that it
9 will remain at a constant level.

10 **Q That constant level is the**
11 **level as which it was -- existed from '97**
12 **to 2001, correct?**

13 A Relative to the industry,
14 correct.

15 **Q And if you change that**
16 **calibration period by even a year, it would**
17 **very significantly affect the entire future**
18 **projection, correct?**

19 A It could. You could look at
20 lots of different blocks of years, and you
21 need to use informed judgment to decide
22 what is most appropriate. You can't just

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 244

1 future were unforeseeable. Others, I
2 think, could be predicted, so I don't want
3 to just say the totality of it couldn't be
4 foreseeable. So --

5 **Q But the totality certainly**
6 **couldn't have been foreseen, correct, in**
7 **any given year, the totality --**

8 A But material factors that are
9 part of that could be, so I don't want to
10 just put it all in a bucket and say we
11 couldn't tell you about anything. There
12 are significant parts of it that we could
13 tell you about it.

14 **Q Would you agree with me that,**
15 **in any given year of Grace's history, the**
16 **propensity to sue Grace year-by-year or**
17 **over a period of many years was in its**
18 **totality materially affected by factors**
19 **that could not be foreseen?**

20 A I think Grace, as well as other
21 defendants, were affected by increases in
22 the propensity to sue for meso that weren't

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 245

1 foreseen.

2 **Q** Now, I want to focus
3 **specifically on your calibration period for**
4 **Grace -- that is from '97 to 2001.**
5 **Correct?**

6 A For the number of filings,
7 correct.

8 **Q** Just still talking propensity,
9 **when it comes to the propensity**
10 **determination that you made, you used a**
11 **calibration period of '97 to 2001. Fair?**

12 A True.

13 **Q** Okay. Now, if we went back
14 **over that period of time, that calibration**
15 **of time, in fact, there turned out to be**
16 **during that calibration period dramatic**
17 **volatility in Grace's propensity, correct,**
18 **with respect to mesothelioma?**

19 A There were fluctuations in the
20 ratios that I show of Grace relative to the
21 industry. And when I see that type of
22 thing, it's important to me to try to

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 255

1 cause-and-effect factors at a more
2 individual claimant basis. I just fail to
3 see how that is very possible, given the
4 types of data that are available regarding
5 individual claimants for mesothelioma.

6 **Q Well --**

7 A It sounds like a great theory,
8 but I don't think it's very practical.

9 **Q I see. Are you aware of any**
10 **other formal method of scientific analysis**
11 **that enables you to identify causal**
12 **factors?**

13 A I haven't studied that. That's
14 not how I do my analysis.

15 **Q Now, when it comes to Grace**
16 **specifically, apart from the moratoria,**
17 **were there any other factors that you**
18 **identified affecting Grace such that they**
19 **might change the Grace propensity in**
20 **relationship to the industry propensity**
21 **during the late -- during the calibration**
22 **period?**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 256

1 **Did I screw that up?**

2 A No. I'm thinking.

3 Not specifically.

4 **Q How much of the increase -- or**
5 **there was an increase in the propensity**
6 **versus the industry during your calibration**
7 **period, correct?**

8 A Yes.

9 **Q Okay. So, in fact, if we took**
10 **your propensity number, about 58 percent --**

11 A For meso.

12 **Q -- for meso, that number**
13 **reflects in part the impact of an increase**
14 **in propensity to sue Grace during your**
15 **calibration period, correct?**

16 A Ratios of Grace's claims
17 relative to the industry claims are higher
18 in 2000 and 2001.

19 **Q Right.**

20 A And some of that increase is
21 attributable to certain moratorium
22 agreements expiring. And other reasons for

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 259

1 A That it increased in 2000,
2 2001.

3 **Q Yes. To that extent, you had**
4 **to look -- you wanted to look for factors**
5 **that would account for that increase, that**
6 **is, Grace-specific factors, right?**

7 A I wanted to understand
8 information that would tell me which years
9 would be most representative of Grace for
10 the future.

11 **Q Right. And in order to do**
12 **that, again, you have to go look back to**
13 **what is causing the events to take place.**
14 **You want to know if there are going to be**
15 **events that are non-recurring or if there**
16 **are going to be events that are recurring,**
17 **correct?**

18 A I agree.

19 **Q Now, as I understand it, the**
20 **only event that you have actually analyzed**
21 **that is unique to Grace during that period**
22 **of time is the -- are the moratoria,**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 260

1 **correct?**

2 A The moratorium, and the other
3 specific item that I needed to consider for
4 the calibration period was what the partial
5 year of filings represents in terms of the
6 relationship to the industry. I need to
7 set them on equal time or volume
8 considerations in order for the ratio to
9 make sense.

10 **Q But in terms of changes**
11 **affecting the propensity against Grace, the**
12 **only --**

13 A I didn't identify anything
14 else. Correct.

15 **Q Okay. Now, with respect to the**
16 **moratorium, did you measure -- from what**
17 **you have said -- well, let me just ask you.**

18 **Did the moratorium have the net**
19 **effect of increasing the overall average**
20 **propensity to sue Grace in the calibration**
21 **period? In other words, did the moratoria**
22 **affect propensity within the calibration**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 265

1 **Q Okay.**

2 A Because of the effect of the
3 moratorium.

4 **Q No, the effect of the**
5 **moratorium would only affect 1996. Well, I**
6 **will rephrase it. What it says, you work**
7 **with 1996 back to 1991 before really any of**
8 **the moratorium had any kind of effect on**
9 **the propensity?**

10 A I haven't looked at that
11 specific range of years, but one test that
12 I did do was I looked at the whole period
13 from '92 to 2001. And I get essentially
14 the same percentage that I selected by
15 reaching back that far.

16 **Q You still are then including**
17 **the later period of time. What I am trying**
18 **to tease out is --**

19 A I think the propensity to sue
20 Grace increased. I think it's important to
21 use a span of years that are as current and
22 responsive to the future as possible. But

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 273

1 moratoria. That's fine.

2 But I then asked the question,
3 what about the two years that have the
4 greatest impact on the calibration period,
5 which are 2000, 2001.

6 Do they affect -- do they
7 reflect the impact of another factor that
8 is unique to Grace other than the
9 moratorium?

10 That's what I am getting at.

11 So the question is:

12 Did you look to see whether a
13 portion of the increase in propensity in
14 2000, 2001, was due to factors other than
15 the moratorium, that is, factors unique to
16 Grace?

17 Did you do that?

18 A I didn't specifically break it
19 apart in terms of how much is the
20 moratorium and how much might be other
21 factors.

22 Q Fine. Let me ask you a couple

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 313

1 understanding of the data.

2 I directly relied on a
3 selection of '97 to 2001 as being
4 responsive.

5 **Q Now, if we take a look at the**
6 **trend line from '93 through '98, that's a**
7 **total of six years. And is it fair to say**
8 **that the propensity trend line from '93 to**
9 **'98 is consistently down?**

10 **A The ratios in each successive**
11 **year of Grace relative to the industry are**
12 **lower.**

13 **Q Then there are two years in**
14 **which there is the beginning of a rise, and**
15 **then one year in which there is sharp jag**
16 **up, correct?**

17 **A 1999 increases, and 2000**
18 **increases at a greater rate.**

19 **Q And are there statistical tests**
20 **to use to determine whether the group of**
21 **years from '97 -- from '93 to '98 is**
22 **statistically different from the group of**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 314

1 **years, '98 -- I mean -- 1999, 2000, and**
2 **2001?**

3 A You could use tests to
4 determine if you felt that the average
5 during the two time periods was different,
6 but that wouldn't prove anything.

7 **Q Well, it may not prove**
8 **anything, but there are tests that are**
9 **available -- are there not -- for testing**
10 **as a statistical matter whether those two**
11 **groups of numbers are significantly**
12 **different, correct?**

13 A You could test whether the
14 averages are different, but the purpose
15 here is not to show whether they are
16 different. The purpose is to make an
17 assumption regarding what is most
18 representative for the future.

19 **Q Well --**

20 A And it doesn't matter if the
21 two groups are different --

22 **Q So --**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 315

1 A -- to do that.

2 Q Well, first of all, you didn't
3 do the test, right?

4 A I didn't see a need to do that.

5 Q But you didn't do the test?

6 A I didn't do the test because I
7 did not think it was necessary.

8 Q Fair enough.

9 So if it turns out that there
10 is a steep downward trend from '93 to '98,
11 there is then a change in direction from
12 1999 and 2000. You then get to the key
13 question which is:

14 If those trends are there and
15 they are statistically significant, down
16 and then reversal up, you then have to ask
17 yourself the question, do you not, about
18 which trend is most probative of the
19 future, right?

20 A I didn't try to answer the
21 question, which trend is representative of
22 the future. I tried to ask myself: Which

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 316

1 overall rate is most representative of the
2 future?

3 And if I were to follow one
4 theory that says I should be as responsive
5 as possible to recent period experience, I
6 would have only used the data in 2000 and
7 2001 with the very high level.

8 But I didn't do that because I
9 didn't think it was appropriate.

10 I looked into the underlying
11 nature of the reasons that the '97, '98,
12 and 1999 -- '96, '97, '98, and '99 years
13 are depressed and selected the overall
14 calibration period as representative going
15 forward.

16 And as long as I understand the
17 reasons why one group of years is going
18 down, I don't need to test whether they're
19 statistically different. I just need to
20 make an informed judgment as to what I
21 think is the best rate on a going-forward
22 basis.

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 317

1 **Q** Did you do any tests to
2 determine -- did you do any tests to
3 determine which years from '93 to 2001,
4 which years were most representative?

5 A That's a judgment.

6 **Q** I understand that. But did you
7 do a test or statistical or other
8 quantitative test to kick the tires on your
9 judgment?

10 MR. MULLADY: Objection to the
11 form.

12 A I used principles of actuarial
13 science relating to the credibility of
14 data, stability of data, responsiveness of
15 the time period. I used those fundamental
16 principles to make a reasonable assumption.

17 **Q** Okay. I have got two more
18 topics to cover, and then I will be done.

19 I want to now turn from -- the
20 ratio that we have talked about is
21 propensity. It's a ratio -- it's a ratio
22 between claims against Grace and claims

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 323

1 And I need to look at things in these
2 five-year buckets in order to then apply
3 the run-off from that point forward.

4 So I needed -- I had an actual
5 data point for 2006.

6 **Q Yes.**

7 A And I used that to develop to
8 '09.

9 **Q Would it be fair to say that**
10 **for 2007, 2008, 2009 you made the judgment**
11 **or assumption that the rate would be the**
12 **same as 2006?**

13 A Yes.

14 **Q And is that a judgment for an**
15 **assumption that is the output of a**
16 **quantitative analysis, or is that simply a**
17 **judgment that you made, you considered to**
18 **be reasonable and of service in answering?**

19 A It took into consideration the
20 expected run-off between the 2005 to 2009
21 group versus the 2000 to 2004 group from
22 Professor Stallard's work, both his older

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 338

1 **claimants that it settled with?**

2 A I am not aware of that evidence
3 in this case. No.

4 **Q I take it you were not asked,**
5 **as part of your work, to calculate Grace's**
6 **several liability at any point in time,**
7 **correct?**

8 A I was asked to estimate future
9 liability, an estimate of what it would
10 take to monetize its liabilities if it had
11 continued in the tort system.

12 **Q How much it would have cost**
13 **Grace to resolve cases as they came up in**
14 **the tort system, right?**

15 A Right.

16 **Q I am just asking you -- I take**
17 **it then the answer to my question is no,**
18 **nobody specifically asked you to determine**
19 **what Grace's several liability was,**
20 **correct?**

21 A But it's -- even at several
22 liability could change over time. I'm not

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 340

1 **Q Were you asked to determine**
2 **that?**

3 A I was asked to determine what
4 they would have continued to pay, and I
5 used what they historically settled for as
6 part of the basis for that.

7 **Q What they historically paid,**
8 **settled for, they paid in order to avoid**
9 **not only their share of the liability, but**
10 **also joint liability, correct?**

11 MR. MULLADY: Objection.
12 Foundation.

13 **Q If you know. If you don't**
14 **know, just say you don't know.**

15 A I don't know all of the reasons
16 that they entered into the settlements that
17 they did.

18 **Q If you want to know what their**
19 **share was -- we all know how much they**
20 **paid -- but if you want to know what their**
21 **share was of the total liability, you have**
22 **to know how much it paid in the aggregate**

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 342

1 A It employs assumptions, yes.

2 Q And the assumptions that it
3 employs -- I am fiddling because it's
4 around here someplace -- is essentially
5 that there would be a CPI adjustment of
6 about 3 percent, correct?

7 A That's one component of what I
8 call the trend, which is the annual change
9 in the average costs.

10 Q Another component was an
11 assumed reduction of 10 percent for three
12 years, correct?

13 A Correct, from 2002 to 2005.

14 Q And another assumption was that
15 there would be a 1 percent increase per
16 year in the settlement demands, just
17 because settlement demands always go up,
18 right?

19 A That there would be a 1 percent
20 increase in settlement demands following
21 the three years of 10 percent decreases
22 because, in general, there is some erosion

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 343

1 of the reforms that led to these decreases.

2 **Q Finally, there is then an**
3 **assumption that settlement demands will**
4 **decline to some extent as a result of aging**
5 **of the population, correct?**

6 A Correct.

7 **Q Now, is there any model that**
8 **led to each one of those assumptions -- are**
9 **those basically assumptions that you used**
10 **in making your model?**

11 A Those are assumptions that are
12 used within the model. There was some
13 analysis that led to the selection of each
14 of those assumptions.

15 **Q At the end of the day, though,**
16 **when you selected, for example, 10 percent**
17 **decline for three years, would that be the**
18 **outcome of some statistical analysis, or is**
19 **that a judgment on your part?**

20 A It was the outcome of reviewing
21 experience for large defendants that
22 remained solvent during the relevant time

US District Court - Delaware
Chapter 11 - W.R. Grace

FINAL - November 5, 2007
Jennifer L. Biggs

Page 344

1 period.

2 **Q Okay. You then have the**
3 **assumption that settlement demands will**
4 **increase 1 percent forever. Is there a**
5 **model?**

6 A Excuse me.

7 **Q You then said -- I thought you**
8 **then said --**

9 A For five years.

10 **Q For five years.**
11 **Is there a model that told you**
12 **that answer, or was that again an**
13 **assumption that you made?**

14 A That was a judgment based on --
15 that was more judgmental in nature than the
16 10 percent decline, partly because we are
17 talking about the time period into the
18 future of 2006 to 2010. So there is not
19 any experience to actually observe in
20 making that judgment.

21 But it's consistent with
22 expectations of what would typically happen